* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

**Writ Petition (C) No. 13214 of 2004**

**Date of Decision: April 3, 2007**

Ghanshyam Singh ..... Petitioner
Through Mr. D.R.Gupta, Advocate

versus

C.E.O.BSES POWER LTD. & Anr. ..... Respondent
Through Mr. Jayant Nath, Sr. Advocate with
Mr.Rajnish Kr. Jha, Advocate

**CORAM:**
**HON'BLE MISS JUSTICE REKHA SHARMA**

1. Whether reporters of Local paper may be allowed to see the judgment? Yes
2. To be referred to the reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

**REKHA SHARMA, J.**

The petitioner was working as Assistant Engineer in the erstwhile Delhi Vidhyut Board (DVB). In the year 1998 he faced a departmental enquiry. We need not go into the charges or the report of the Enquiry officer. They are not material so far as the present order is concerned. What, however, needs to be noticed is that the Enquiry Officer exonerated him of all the charges but not the Disciplinary Authority which found the order of the Enquiry Officer unsustainable and not only returned a finding of guilt against the petitioner but also imposed upon him the penalty of "reduction by three stages for a period of three years with further stipulation that during the period of reduction he will earn

increments of pay and on expiry of this period reduction will not have the effect of postponing his future increments of pay."

It is alleged that the Disciplinary Authority before reversing the finding of the Enquiry Officer neither gave a copy of the Enquiry report to the petitioner nor his tentative reasons for disagreeing with the finding. The whole edifice of the petitioner's case is raised on the non-issuance of notice to him by the Disciplinary Authority requiring him to show cause against its tentative decision to differ with the finding of the Enquiry Officer. This lapse on the part of the Disciplinary Authority was sought to be justified by the respondents with reference to Memo dated February 8, 2000, the relevant part of which reads as under : -

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> AND WHEREAS the Inquiry Officer submitted his report dated 16.2.99 holding the charge against the said Shri Ghanshyam Singh as not proved.
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> AND WHEREAS the undersigned has considered the Inquiry report submitted by the Inquiry Officer with reference to the records of the case. It is observed that the originals of Ex.S-6 to S-8 were not produced before the Inquiry Officer. The Inquiry Officer has observed that Ex.S-6 does not confirm that the said IR had at all been delivered to AE(Zone). Moreover, Inquiry Officer has cast aspersions on the signatures of the charged official on Ex.S-1 and has observed that it is of no evidential value. Records, however, reveal that Ex.S-6 and Ex.S-7 were delivered by Shri Uma Ram Rathore to the diarist as was the practice. In view of the above I propose to hold the charges against the said Shri Ghanshyam Singh, AE as proved in disagreement with the findings of the Inquiry Officer. Keeping in view the proven aspect of the

> charge and totality of the circumstances of the case, I propose to impose upon the said Shri Ghansyam Singh , major penalty of reduction by three stages for a period of three years with further stipulation that during the period of reduction he will earn increments and on expiry of this period the reduction will not have the effect of postponing his future increments of pay.

The above quoted paragraphs by no stretch of imagination can be interpretated to hold that before disagreeing with the report of the Enquiry Officer the Disciplinary Authority had issued notice to the petitioner giving his tentative reasons for disagreeing with the finding of the Enquiry Officer and calling upon him to show cause why the report of the Enquiry officer be not reversed. The Memo dated February 8, 2000 merely called upon the petitioner to show cause why the penalty mentioned therein be not imposed upon him. This surely did not meet with the requirement of giving hearing against the tentative decision to differ with the Enquiry Officer. He skipped that requirement. And, this he could not do. It was unacceptable. It went against the principles of natural justice as old as the hills and, time and again, reiterated by the Apex Court. To that extent, I find myself one with the petitioner.

But then this is not the end of the matter.

The order of the Disciplinary Authority imposing penalty in question was passed as far back as on March 27,2000. The petitioner had a legal right to go against the order. He allowed the

requisite time to pass-by. He sat over the matter not for a few months but for more than four long years. He filed a Revision Petition on May 20, 2004 by which time even the period of penalty had long expired. The Competent Authority by order dated July 14, 2004 dismissed the Revision Petition apparently for two reasons. First, revision petition was not maintainable and secondly, only an appeal lay, and that too, only within a period of six months from the date of the order. It was after the passing of the said order that the petitioner preferred the present writ petition challenging the enquiry proceedings which as noticed above commenced on April 16, 1998 and culminated in the imposition of penalty on March 27,2000.

Should I come to the rescue of the petitioner who chose to file the revision petition against the order of punishment after a lapse of four years making the order passed thereon as the basis to re-open the enquiry proceedings?

Law is by the side of the vigilant and not with those who let the cause pass by them without even a whimper of protest. And, what is the reason put forth by the petitioner for sleeping over the matter, remaining dormant and letting the years pass by? Why did he sit over the matter for four long years? He says that he preferred a Revision Petition under Rule 29(iv) of the Central Civil Services (CCA) Rules, 1965 which does not prescribe any limitation. He further says that the Competent Authority wrongly

treated his Revision Petition as an appeal under Rule 29(v) of the said Rules which prescribes time limit of six months for preferring the same from the date of the impugned order.

In order to test the validity of the explanation rendered by the petitioner, it will be appropriate to reproduce the relevant provision of Rule 29(iv) and (v). This is how it reads:-

> 29.[Revision]
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> (1) Notwithstanding anything contained in these rules-
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> (i).....
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> (ii).....
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> (iii).....
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> (iv) the Head of a Department directly under the Central Government, in the case of a Government servant serving in a department or office (not being the Secretariat or the Posts and Telegraphs Board), under the control of such Head of a Department; or
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> (v) the Appellate Authority, within six months of the date of the order proposed to be [revised]; or
>
> (vi) .....
>
> may at any time, either on his or its own motion or otherwise call for the records of any inquiry and [revise] any order under these rules or under the rules repealed by Rule 34 from which an appeal is allowed, but from which no appeal has been preferred or from which no appeal is allowed, after consultation with the Commission where such consultation is

necessary, and may-

It is true that Rule 29(iv) prescribes no limitation for preferring a revision but the question is whether the said Rule is applicable to the case of the petitioner. The answer is in the negative. This Rule comes to the aid of such an employee whose Head of the Department is directly under the Central Government. Admittedly BSES is not a department which comes under the Central Government. The Rule which applies to the petitioner is Rule 29(v). He should have taken recourse to this provision and preferred an appeal within six months from the date of the order which he did not. Does the petitioner with such conduct deserve any relief under Article 226 of the Constitution of India? I feel the answer has to be in the negative. He should have gone in appeal without loss of time and in any case within the prescribed period of six months from the date of the order. Four years of inactivity and then choosing of the wrong forum. The doors need to be closed to him. The order need not be burdened with any references but if any is required the judgment of the Apex Court in Life Insurance Corporation of India Vs. Jyotish Chandra Biswas AIR 2000 Supreme Court 3666 comes to mind. The relevant passage of the judgment reads as under:-

> "The order terminating the services of the respondent was passed on 28.1.1969. The writ petition was filed challenging the said order on 25.3.1975, almost after a period of six years. There was no explanation in the writ petition whatsoever for this inordinate delay. The respondent sought for his

re-employment in the Corporation by his letter dated 9.1.1974 almost after a period of five years from the date of termination of his services. It only indicated that he accepted the order of termination of his services, if not expressly but impliedly. In the writ petition no ground was raised as to deprivation of right of appeal to the respondent against the order of the termination of his services."

The writ petition is dismissed but with no order as to cost.

**REKHA SHARMA, J**

**April 3, 2007**
**g**